

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: June 9, 2011

to: Holly L. McCann
Chief, Excise Tax

from: Stephanie N. Bland
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Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Section 6421 - Definition of a School Bus

This Chief Counsel Advice responds to your request for assistance dated August 24, 2010. This advice may not be used or cited as precedent.

ISSUES

Issue 1

Whether the five types of vehicles described in the facts below are “automobile buses” for purposes of § 6421(b)(1) of the Internal Revenue Code (Code).

Issue 2

If we conclude that the types of vehicles described in the facts below are “automobile buses” for purposes of § 6421(b)(1), whether our conclusion will change if the vehicles are equipped with wheelchair lifts and wheelchair restraint equipment that results in a reduction in the vehicles’ passenger seating capacity.

CONCLUSIONS

Issue 1

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Type A vehicles, Multifunction School Activity Buses, and School Vans are “automobile buses” for purposes of § 6421(b)(1) of the Code. Allowable Alternate Vehicles and Non-Conforming Vans are not “automobile buses” for purposes of § 6421(b)(1).

Issue 2

Our conclusion that Type A vehicles, Multifunction School Activity Buses, and School Vans are “automobile buses” for purposes of § 6421(b)(1) does not change if these vehicles are equipped with wheelchair lifts and wheelchair restraint equipment that results in a reduction in the vehicles’ passenger seating capacity.

FACTS

You identified five types of vehicles and request our advice regarding whether these vehicles are “automobile buses” for purposes of § 6421(b)(1) of the Code. The following are the five types of vehicles that you identified:

- Type A vehicle – The Type A¹ vehicle, also known as a “cutaway van” or “minibus,” is a shortened version of a Type C vehicle (a typical, conventional school bus). The Type A vehicle is constructed on a conversion body or on a van-type or cutaway front-section vehicle with a left side driver’s door. The Type A vehicle typically has a right-side accordion door and steps that are used to access the passenger compartment. The Type A vehicle is designed to carry more than 10 persons in a conventional school bus seating arrangement (rows of cushioned, high-back bench seats, placed on both sides of a center aisle). The roof is tall enough (relative to the passenger compartment deck) to allow a passenger to walk through the compartment in a standing or nearly-standing position. The Type A vehicle satisfies the Federal Motor Vehicle Safety Standards (FMVSS) for school buses. The Type A vehicle has the usual school bus conspicuity characteristics found on Type C vehicles (such as National School Bus Yellow paint and the words “school bus” painted in black letters on exterior surfaces), and traffic control devices (such as stop arms and flashing lights).
- Multifunction School Activity Bus – The Multifunction School Activity Bus (MSAB) is a vehicle that is substantially similar to the Type A vehicle. The main difference between the Type A vehicle and the MSAB is that the MSAB is not used to transport students from home to school or from school to home (route service). The MSAB is suited for transporting students to and from school-related activities, such as sporting events. Schools and school districts are prohibited from using the MSAB for route service. Therefore, these vehicles are

¹ There are seven vehicle types that are manufactured to federal motor vehicle safety standards for school buses. Four of the seven standardized vehicle types are designated with a letter: Type A, Type B, Type C, and Type D. The other three standardized vehicle types are the Multifunction School Activity Bus, the School Van, and the Allowable Alternate Vehicle.

exempt from having the usual school bus conspicuity characteristics found on Type C vehicles (including National School Bus Yellow paint and the words “school bus” painted in black letters on exterior surfaces) and school bus traffic control devices (including stop arms and flashing lights). Even though the MSAB is exempt from the traffic control devices requirement, the MSAB is required to comply with all FMVSS crashworthiness standards, all other requirements in the school bus crash avoidance and conspicuity safety standards, and all post-crash school bus standards.

- School Van – The School Van is a regular 15-passenger van that is converted to meet school bus specifications. The conversion process involves cutting off the original roof, welding in a full roll cage, installing a taller, vaulted-style roof, and adding flashing safety lights. The School Van typically has conventional school bus-style seating (cushioned, high-back bench seats) and conventional school bus-style windows. The School Van also has the conspicuity characteristics found on larger school buses (including National School Bus Yellow paint and the words “school bus” painted in black letters on exterior surfaces) and school bus traffic control devices (including stop arms and flashing lights). The School Van is used for route service. The School Van rides like a regular van, but satisfies FMVSS for school buses.
- Allowable Alternate Vehicle – The Allowable Alternate Vehicle (AAV) is a modified 15-passenger type van. The modifications allow the vehicle to satisfy FMVSS for school buses. The AAV may have school bus-style windows. However, the AAV does not satisfy the conspicuity or traffic control standards required for route service. For example, the AAV generally does not have flashing lights, school bus yellow paint, or a left side stop arm. In addition, the AAV typically retains the standard 15-passenger van bench seats.
- Non-Conforming Van – The Non-Conforming Van (NCV) is generally a 15 passenger-type van. The NCV does not conform to FMVSS for school buses. Generally, the NCV is a cargo vehicle that is converted to passenger use and often does not have the basic safety features of traditional passenger vehicles. You also include in this category unmodified or slightly-modified sport utility vehicles and station wagons. Sport utility vehicles and station wagons are sometimes used in rural areas where students may be picked up on unimproved roads and are commonly operated by small school districts. Sport utility vehicles and station wagons used to transport students do not have the usual school bus characteristics like the other vehicles described above, and do not satisfy FMVSS.

LAW AND ANALYSIS

Background

Section 4081(a)(1)(A) imposes a tax on certain removals, entries, and sales of gasoline.

Section 6421(b)(1) generally provides that if gasoline is used in an automobile bus while engaged in (A) furnishing (for compensation) passenger land transportation available to the general public, or (B) the transportation of students and employees of schools, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which the tax was imposed on such gasoline by § 4081. However, § 6421(b)(1)(A) does not apply with respect to gasoline used in any automobile bus while engaged in furnishing transportation that is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

Section 6421 was added to the Code by § 208(c) of the Highway Revenue Act of 1956, Pub. L. 84-627, 70 Stat. 394, 1956-2 C.B. 1150. As originally enacted, § 6421(b) provided for a payment to the ultimate purchaser “if gasoline is used during any calendar quarter in *vehicles* while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes.” (emphasis added). When Congress amended § 6421(b) in 1978, it replaced the term “vehicles” with the more specific term “automobile buses.” Section 233 of the Energy Tax Act of 1978, Pub. L. 95-618, 92 Stat. 3190, 1978-3 C.B. (Vol. 2) 1. Further, the legislative history to the 1978 amendment indicates that Congress intended to limit the § 6421(b) exemption to buses to encourage the greater use of bus transportation and to discourage the use of less energy-efficient smaller vehicles. See H.R. Rep. No. 95-496, Part III, at 68 – 70 (1978), 1978-3 C.B. (Vol. 2) 71, 130 and S. Rep. No. 95-529, at 54 (1977), 1978-3 C.B. (Vol. 2) 199, 246.

The term “automobile bus” is not defined in § 6421, its legislative history, or the applicable regulations. However, as noted above, the legislative history of § 6421(b) indicates that Congress intended to limit the exemption from gasoline taxes to vehicles capable of transporting a large number of passengers.

If a statute uses words that it does not define, it is necessary to look to the ordinary and everyday meaning of the words in question. Crane v. Comm’r, 331 U.S. 1, 6 (1947). In the context of § 6421(b), the word “automobile” is most naturally read as an adjective that modifies the word “bus” to describe a bus containing within itself the means of propulsion. Med. Transp. Mgmt. Corp. v. Comm’r, 506 F.3d 1364 (11th Cir. 2007). In ordinary and everyday usage, the term “bus” describes a large motor vehicle manufactured, or later modified, to include features designed for transporting a large number of passengers. Those features may include some, but not necessarily all, of the following features: accordion doors, emergency exit doors, steps to facilitate boarding and debarking, center aisles, heavy-duty components designed to accommodate a larger load (chassis, drive chassis, brakes, shock absorbers, springs, etc.), public address systems, special interior lighting, and special markings or paint to

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identify the vehicle. In addition, while special markings or paint schemes may be considered, nothing about the term “automobile bus” or § 6421(b) reasonably suggests that certain vehicle markings are relevant or necessary. Med. Transp. Mgmt. Corp., 506 F.3d at 1369. Thus, for example, merely marking a vehicle with the words “school bus” is not dispositive regarding whether a vehicle is an automobile bus.

The statutory language and legislative history of § 6421(b), when combined with the ordinary meanings of the words “automobile” and “bus,” lead to the conclusion that an automobile bus is a self-propelled vehicle designed to carry a larger number of people than conventional vehicles and of a type that people would ordinarily recognize as a bus, such as a transit bus, an intercity bus, or a school bus.

Two-Part Test

The payment under § 6421(b) is not allowed with respect to gasoline used in a vehicle that actually furnishes the type of transportation described in § 6421(b)(1)(A) or (B) unless the vehicle is an automobile bus. Therefore, to be eligible for a payment under § 6421(b), a claimant must satisfy a two-part test. First, the claimant must demonstrate that the vehicle that used the gasoline for which a payment is sought is an “automobile bus.” Second, the claimant must demonstrate that the automobile bus was used for one of the purposes described under § 6421(b)(1). Thus, the determination of whether a vehicle is an automobile bus for purposes of § 6421(b) is dependent upon the physical characteristics of the vehicle, rather than on how the vehicle is used. To conclude otherwise, and look only to how the vehicle was used by the claimant, renders the first part of the two-part test under § 6421(b) superfluous. We must interpret statutes to give meaning to every word included therein.

Rev. Rul. 70-9, 1970-1 C.B. 216 is instructive when analyzing whether the physical characteristics of a vehicle to determine whether a vehicle is an “automobile bus.” At issue in the revenue ruling is whether certain ‘stretch-out’ type vehicles are buses subject to the manufacturers excise tax imposed by § 4061(a)(1)² of the Internal Revenue Code of 1954 or whether they are ‘other automobiles’ subject to tax under § 4061(a)(2). The vehicles described in the revenue ruling include limousines and coaches of various passenger capacities designed for use in public or private transportation, such as airport limousine service, courtesy vehicle resort service, charter service, and sightseeing tours.

Specifically, the revenue ruling describes three types of vehicles. The first vehicle (Type 1) described in the revenue ruling is a conventional passenger sedan automobile, generally equipped by the original manufacturer with a heavy-duty ‘taxi or police package,’ converted into an eight passenger (including a driver) sedan limousine. The vehicle is lengthened and reinforced, and as modified has two doors on each side and

² Section 4061 was repealed in 1984. Pub. L. 98-369, Div. A., Title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980. However, the concepts and principles upon which the analysis and conclusions of Rev. Rul. 70-9 are based are still valid.

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three rows of seats: two rows of bench-type seats (front and rear) and a center row of two sectional fold down seats. The converter may install optional equipment such as cord upholstery, push-button radio, and various types of air conditioning equipment.

The second vehicle (Type 2) described in the revenue ruling is a conventional passenger sedan or station wagon automobile, generally equipped by the original manufacturer with a heavy-duty 'taxi or police package,' converted into either a 9, 12, or 15 passenger sedan coach or station wagon coach. The conversion process includes lengthening and reinforcing the frame and body and extending the drive shaft. The process also includes the installation of such items as heavy-duty springs and shock absorbers, a roof baggage rack and tarpaulin, additional rows of bench-type seats, doors, windows, ash trays and arm rests. Optional equipment, in addition to that available for Type 1 vehicles, includes booster brakes, a public address system and microphone, seat belts, courtesy lights, and two-tone paint.

The third vehicle (Type 3) described in the revenue ruling is a conventional panel truck, generally equipped by the original manufacturer with heavy-duty features, converted into a 12, 15, 18, or 21 passenger coach. The conversion process employed – and optional equipment available – for this type of vehicle is substantially the same as that for Type 2 vehicles.

The revenue ruling concludes that Type 2 and Type 3 vehicles are buses, but Type 1 vehicles are not. The revenue ruling analyzes the performance upgrades and accessories added to the vehicles and found that Type 2 and Type 3 vehicles exhibited features usually found in buses, rather than in conventional passenger automobiles. In contrast, the revenue ruling concludes that Type 1 vehicles still retain the basic characteristics of conventional passenger automobiles.

With these concepts in mind, we examine the five vehicle types for which you requested our advice to determine whether the vehicles exhibit features usually found in buses or retain the basic characteristics of conventional passenger automobiles.

Issue 1

Type A vehicle

The Type A vehicle is essentially a shortened conventional school bus with an accordion-style door, steps that are used to access the passenger compartment, conventional school bus seats and seating arrangement, and tall ceilings enabling passengers to stand and walk through the passenger compartment. With the exception of the driver's side door, the Type A vehicle resembles what an average person recognizes as a bus. The Type A vehicle has the features usually found on buses and does not retain the basic characteristics of conventional passenger automobiles. Thus, we conclude that Type A vehicles are automobile buses for purposes of § 6421(b)(1).

MSAB

The MSAB is generally similar in appearance – both internally and externally – to the Type A vehicle. The main difference between the MSAB and the Type A vehicle is that the MSAB is not used for route service. As a result, the vehicles differ in color scheme (Type A vehicles are painted National School Bus Yellow, while MSABs may or may not be painted National School Bus Yellow) and markings (Type A vehicles are marked “school bus,” while MSABs are not). As discussed above, nothing about the term “automobile bus” or § 6421(b) reasonably suggests that certain vehicle markings are relevant or necessary. Med. Transp. Mgmt. Corp., 506 F.3d at 1369. Therefore, cosmetic differences such as paint scheme and markings are not controlling and do not receive much weight in this analysis. Because the MSAB is similar to the Type A vehicle and we conclude that the Type A vehicle is an automobile bus for purposes of § 6421(b)(1), we also conclude that the MSAB is an automobile bus for purposes of § 6421(b)(1).

School Van

The School Van is a 15-passenger van that is converted for use as a school vehicle through major alterations such as the installation of a roll cage, a vaulted-style roof, conventional school bus-style seats, flashing lights, and conventional school bus-style windows. These major alterations give the School Van features usually found in buses (as opposed to conventional passenger automobiles). Therefore, we conclude that the School Van is an automobile bus for purposes of § 6421(b)(1).

AAV

The AAV is a 15-passenger vehicle that is modified so that it meets FMVSS for school buses. The interior and exterior of the AAV generally resembles a slightly modified NCV. Unlike the School Van, its roof is not modified and it does not have conventional school bus seating. Like the Type 1 vehicles discussed in Rev. Rul. 70-9, the modifications made to a 15-passenger vehicle to convert it into an AAV do not give it features usually found in buses. The AAV retains the basic characteristics of conventional passenger automobiles. Therefore, we conclude that the AAV is not an automobile bus for purposes of § 6421(b)(1).

NCV

The NCV is a category of vehicles that includes unmodified (stock) 15 passenger-type vans, stock or slightly-modified sport utility vehicles, and stock or slightly-modified station wagons. Like the Type 1 vehicles discussed in Rev. Rul. 70-9, NCVs do not have features usually found in buses and retain the basic characteristics of conventional passenger automobiles. Therefore, we conclude that the NCV, which includes sport

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utility vehicles and station wagons, is not an automobile bus for purposes of § 6421(b)(1).

Issue 2

Our conclusions above regarding whether a vehicle is an automobile bus do not turn on seating capacity alone. Therefore, the mere fact that certain Type 1 vehicles, MSAB vehicles, or School Vans are equipped with wheelchair lifts and/or wheelchair restraint equipment does not change our conclusion as to whether that those vehicles are automobile buses.

We hope this memorandum addressed the questions you raised concerning § 6421(b)(1). Please call Michael Beker at (202) 622-3130 if you have any further questions regarding this matter.